IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

WP(C).No. 25982 of 2006(R)

PETITIONERS:

----

1. **HON. SUB LT. M.V. HARSHAN,**
   IN (RETD.) MANAGER,
   U.R.C N.C.C. GROUP H.Q. - ERNAKULAM,
   C/O.24 KERALA BATTALION, NCC,
   KANATTUKARA, THRISSUR.

2. **HON.NB.SUB JANARDHAN M.N.,**
   ASST. MANAGER, U.R.C. N.C.C. GROUP H.Q.-ERNAKULAM,
   C/O.24 KERALA BATTALION, NCC,
   KANATTUKARA, THRISSUR.

3. **EX-SUB U.RAMACHANDRAN, ACCOUNTANT,**
   U.R.C. N.C.C. GROUP HQ-ERNAKULAM,
   C/O.24, KERALA BATTALION, NCC,
   KANATTUKARA, THRISSUR.

4. **SMT.P.KAMALAM, ACCOUNTANT (AUTOMATION),**
   U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
   C/O.24 KERALA BATTALION, NCC,
   KANATTUKARA, THRISSUR.

5. **EX-SUB P.V.KUMARAN,**
   OFFICE CLERK, U.R.C. N.C.C. GROUP HQ-ERNAKULAM,
   C/O.24 KERALA BATTALION, NCC,
   KANATTUKARA, THRISSUR.

6. **EX.NB SUB K.V.BALAKRISHNAN,**
   BILL CKERK, U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
   C/O.24 KERALA BATTALION, NCC,
   KANATTUKARA, THRISSUR.

7. **EX-POR (TEL) K.A.THOMAS,**
   BILL CLERK, U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
   C/O.24 KERALA BATTALION, NCC,
   KANATTUKARA, THRISSUR.

8. EX.NB/SUB V.K.PEETHAMBARAN,
BILL CLERK, U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

9. SHRI.M.J.KURIAKOSE, SALESMAN,
U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

10. EX.HON.NB.SUB P.RAMACHANDRAN NAIR,
SALESMAN, U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

11. EX.HAV.T.S.SASI, SALESMAN,
U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

12. EX.PO(MA)A.K.VARGHESE,
SALESMAN, U.R.C. N.C.C. GROUP HQ-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

13. EX.HAV K.G.BALAKRISHNAN, SALESMAN,
U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

14. EX.P.O.(RC I) JOHNSON P.P., SALESMAN,
U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

15. SHRI.JOHNSON P.T., PEON,
U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

16. SHRI.MOHAMMED ALI,
PART TIME SWEEPER,
U.R.C. N.C.C. GROUP H.Q-ERNAKULAM,
C/O.24 KERALA BATTALION, NCC,
KANATTUKARA, THRISSUR.

BY ADV. SRI.D.ANIL KUMAR

RESPONDENTS:

----

1. UNION OF INDIA,
REP. BY ITS SECRETARY,
DEFENCE MINISTRY, NEW DELHI.

2. THE CHIEF OF ARMY STAFF,
GENERAL STAFF BRANCH,
ARMY HEAD QUARTERS, DHQ. P.O.,
NEW DELHI-110 011.

3. QUARTER MASTER GENERAL,
ARMY HEAD QUARTERS, L.I.BLOCK ROOM NO.16,
CHURCH ROAD, NEW DELHI.

4. THE DIRECTOR GENERAL N.C.C.,
POST BOX NO.10917,
R.K.PURAM (MAIN) P.O.,
EAST BLOCK, NEW DELHI-110 066.

5. GENERAL OFFICER COMMANDING,
CANTEEN CELL, C/O.QMG'S BRANCH,
H.Q-ATNK & K AREA,
ISLAND GROUNDS, CHENNAI.

6. STATION COMMANDER,
STN. HQ (ARMY), NAVAL BASE P.O.,
COCHIN-4.

7. THE AREA MANAGER,
C.S.D. DEPOT,
GANDHI NAGAR, KADAVANTHRA,
KOCHI.

BY ADV. SRI.THOMASMATHEW NELLIMOOTTIL,SR.PANEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.25982/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COMMUNICATION DT.11.7.06 ISSUED BY 5TH RESPONDENT.

EXT.P2:- COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DT.18.7.06.

EXT.P3:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE PRESIDENT OF INDIA, PRIME MINISTER OF INDIA AND OTHERS.

EXT.P4:- COPY OF THE REPLY DT.4.8.06 SENT FROM PRIME MINISTER'S OFFICE.

EXT.P5:- COPY OF THE CORRESPONDENCE DT.26.7.06 BETWEEN THE 4TH RESPONDENT AND THE 3RD RESPONDENT.

EXT.P6:- COPY OF THE LETTER WRITTEN BY THE 3RD RESPONDENT DT.7.6.06.

EXT.P7:- COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT.

EXT.P8:- COPY OF THE COMMUNICATION DT.11.8.06 SENT BY 3RD RESPONDENT.

EXT.P9:- COPY OF THE REPLY LETTER BY NCC DIRECTORATE (K&L)

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE ARMY HQ.QMG'S BRANCH DIRECTIONS.

EXT.R1(b):- COPY OF THE ARMY QUARTER MASTER GENERAL'S BRANCH LETTER NO.96036/Q/DDGCS DT.19.12.06.

EXT.R1(c):- COPY OF THE LETTER DT.21.11.05.

EXT.R1(d):- COPY OF THE ARMY ORDER 19/03.

/TRUE COPY/

tss

K.K. DENESAN, J.

= = = = = = = = = = = = = = = = =
W.P.(C) No. 25982 OF 2006 R
= = = = = = = = = = = = = = = = =

Dated this the 31st January, 2007

J U D G M E N T

The petitioners are employees attached to 24 Kerala Battalion, N.C.C. Thrissur. At Palakkad, there is another canteen run by the military. As per Exts. P1 and P2 orders a decision was taken that 80 per cent of the existing members of the 24 Kerala Battalion, N.C.C. canteen shall be transferred to a newly formed extension counter at Thrissur. The genesis of the extension counter is traceable to a decision taken to run such an extension counter as addenda to military canteen at Palakkad. The petitioners apprehend that the transfer of such number of members from the canteen attached to 24 Kerala Battalion will result in degrading the N.C.C. canteen from B to C and as a result of such degrading the petitioners are likely to suffer loss in emoluments since the salary and other allowances payable to the employees of the canteen have got a bearing on the grade assigned to the particular canteen.

2. This Court on 13-10-2006 passed an order

staying all further proceedings pursuant to Exts. P1 and P2. The respondents entered appearance and have filed a counter affidavit and subsequently an additional counter affidavit as well. The contention urged on behalf of the respondents is that the petitioners are not members of the canteen and they in their capacity as employees have no right to question the policy decision taken by the Chief of Army Staff. According to the respondents whether an extension of a military canteen should be opened in a different centre or district and whether members belonging to one canteen shall be transferred to another are matters that fall within the policy decision making power of the 5th respondent who is the General Officer Commanding at Chennai.

3. The petitioners submit that they have sufficient locus standi to challenge Exts. P1 and P2 since the effect of those orders would visit them with civil consequences. The petitioners would contend that the impugned decisions were taken arbitrarily.

4. Along with the additional counter affidavit respondents have produced order dated 19-12-2006 which

is said to be the latest order on the subject superseding all previous orders. Counsel for the petitioners submits that the petitioners take strong exception to the order said to have been passed on 19-12-2006.

5. After hearing the counsel for the petitioners and the counsel for the respondents at some length, a submission was made before me that the Chief of Army Staff is competent to look into the grievance of the petitioners and take appropriate decision touching the merits of the contentions of the parties. Having regard to the facts and circumstances of this case and the rival contentions urged by the parties before me, I feel that it would be appropriate that the dispute between the petitioners on the one hand and the 5th respondent on the other centering round the correctness of Exts. P1 and P2 decisions, shall be placed for the decision of the 2nd respondent with appropriate directions. Accordingly, this writ petition is disposed of directing the 2nd respondent-Chief of Army Staff to consider Ext. P3 representation filed by the petitioners on 21-7-2006, having regard to all facts

and circumstances and to take appropriate decision in accordance with law as expeditiously as possible, in any event within two months from the date of receipt of a copy of the judgment. The interim order passed on 13-10-2006 and extended from time to time shall remain in force until Ext. P3 is disposed of. However, it will not prevent the respondents from retaining the extension counter at Thrissur without transferring the members of 24 K. Kerala Battalion N.C.C.

K.K. DENESAN
JUDGE

jan/